

In the Matter of License No. 247575 and all other Licenses  
Issued to: JAMES E. DILLON

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1548

JAMES E. DILLON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 9 February 1965, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's licenses for six months outright upon finding him guilty of negligence. The specification found proved alleges that while serving as Master on board the United States SS GARDEN STATE under authority of the license above described, on 23 January 1964, Appellant failed to navigate the ship at a moderate speed in fog and restricted visibility, thereby contributing to a collision between the GARDEN STATE and the Japanese MV ALASKA MARU on the Gulf of Mexico.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

Both parties introduced in evidence the testimony of witnesses and documentary exhibits. Appellant testified that he was temporarily relieved of the conn by the chief Mate a few minutes before the collision and that the GARDEN STATE could have stopped in one ship length (455 feet) with the engines going full astern. Counsel conceded that the average speed of the GARDEN STATE for the fourteen minutes proceeding the accident was six knots (R. 92).

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved, and entered the above order of suspension.

FINDINGS OF FACT

On 23 January 1964, Appellant was serving as Master on board the United States SS GARDEN STATE and acting under authority of his license when his ship, after proceeding westward out of the marked channel departing Tampa, Florida, collided with the Japanese MV ALASKA MARU which, due to fog, was anchored about three miles in a northwesterly direction from the end of the marked channel. This was more than a mile to the north of, and slightly to the east of, the sea buoy which is three miles to the west end of the marked channel, and in waters governed by the International Rules of the

Road. At 1725, in dense fog which limited visibility to approximately 150 feet, the bow of the GARDEN STATE penetrated the port side of the ALASKA MARU at an angle of about 90 degrees by the number four hatch. There were no injuries on either vessel.

The 475 foot long ALASKA MARU, bound for Tampa, had anchored at 1030 on the morning of the collision when the distance of visibility decreased to about 1000 feet. Other ships were anchored in the same general area beyond the marked channel, some to the north and some to the south of the fairway between the sea buoy and the marked channel. Until the time of collision, fog signals were sounded on the ALASKA MARU by ringing a bell, 9-1/2 inches in diameter. Thirty or forty seconds before the collision, an attempt was made to blow a warning whistle signal.

The GARDEN STATE, 455 feet in length with a draft of 16 feet 5 inches forward and 21 feet 1 inch aft, delayed (due to fog) getting under way to depart Tampa until 1100 on 23 January. Her radar became inoperative approaching the marked channel and remained in this condition. With a pilot at the conn, she navigated the channel. The sea was calm, wind was negligible, and there was a northerly current which necessitated steering three or four degrees to the left of the channel course of 265 degrees true. A bow lookout was posted and proper fog signals were sounded.

The GARDEN STATE reached the end of the marked channel at 1649, her engines were stopped, and she drifted until the pilot left on the pilot boat at 1711. By the latter time, the ship was almost equally distant from the end of the channel and the sea buoy, and about a quarter-mile north of a line between these two points.

As soon as the pilot left, Appellant ordered the speed set at one-half ahead (40 R.P.M. or 8.9 knots less 10% allowance for slip) and a change of course to the right to 299 degrees true and gyro in order to clear the fairway for a vessel astern of the GARDEN STATE and also to stay well clear of vessels known to be anchored to the south of the fairway. The density of the fog had increased considerably since the GARDEN STATE got under way at 1100. The Second Mate was on watch on the bridge but Appellant remained in charge of the navigation. At 1718, Appellant ordered the engine speed reduced to 30 R.P.M. (6.7 knots less 10% allowance for slip). At 1722, Appellant, having been on the bridge since 1100, was relieved by the Chief Mate in order to allow Appellant to go to the head.

At 1724, about 1 1/2 minutes before the collision, the bow lookout reported to the bridge, by telephone, that he heard the ringing of a bell apparently coming from one point on the port bow. The Chief Mate ordered the engines stopped. When the lookout made the same report a few seconds later, the engines were ordered full astern and the rudder hard right.

Shortly thereafter, the ALASKA MARU was seen dead ahead at a distance of about 150 feet. At 1725 1/2, the bow of the GARDEN STATE struck the port side of the other ship and, in places, penetrated the hull to a depth of eight feet. Appellant returned to the bridge just after the collision occurred.

The GARDEN STATE had travelled 1.4 miles from the place where she started moving ahead at about 1711 1/2 to the point of collision. Since the ship covered this distance in not more than 14 minutes, her average speed during this time was at least 6.0 knots over the ground.

Appellant's prior record consists of an admonition in 1958 for negligently permitting a pilot to operate a vessel in excess of a statutory speed limit and a probationary suspension in 1959 (affirmed in Appeal No. 1197) for negligently grounding his vessel.

### BASES FOR APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

Point I. The findings of fact and conclusions of the Examiner show that the collision was caused solely by the statutory fault and gross negligence of the ALASKA MARU in failing to sound effective fog signals and a warning whistle signal. The faint ringing on a small bell on the starboard wing of the bridge did not comply with the rule requiring the sounding of a bell in the forepart of the vessel and a gong in the after part.

At most, Appellant was guilty of an error of judgement and not negligence as he maneuvered to the north to clear the fairway and the vessels anchored to the south. The pilot agreed that this maneuver was safe under the existing circumstances and conditions.

Appellant was free from fault because collision could not be avoided by the time the weak bell signals were heard by the lookout 1 1/2 minutes prior to the collision, reported to the bridge, and the engines put full astern. In a similar case, the anchored vessel was held solely at fault for not sounding the proper fog signals. Pearce v. Old Colony Steamboat Company, 98 Fed. 131 (1st Circ. 1899).

Point II. The Examiner's opinion that the speed of the GARDEN STATE over the ground with a northerly current was between 6 and 7 knots rests on inference drawn from inference and is not a substitute for the probative testimony of Appellant that the speed at 30 R.P.M. was 4.2 knots over the ground allowing 10% for slip and an adverse current of 2 knots.

Point III. The order should be modified, particularly since the original specification did not allege immoderate speed, counsel was denied a transcript to prepare proposed findings and conclusions, Appellant's prudent conduct should not be judged by hindsight, and the collision would have been avoided except for the gross negligence of the ALASKA MARU.

APPEARANCE:      Kirlin, Campbell and Keating of New York City, by John F. Gerity, Esquire  
                                 and Donn Borg, Esquire, of Counsel

### OPINION

Considering all the surrounding circumstances, it is my opinion that Appellant, as Master of

the GARDEN STATE, negligently navigated his ship at an excessive speed in fog, in violation of 33 U. S. Code 1077 (Rule 16 of the International Regulations for Preventing Collisions at Sea), during the time leading up to the collision and that this failure to navigate at a moderate speed contributed to this collision. The usual interpretation of "moderate speed" in fog, as required by Rule 16, is such a speed as will allow a vessel to stop dead in the water within half the distance of visibility or before colliding with another vessel.

Point II raised on appeal will be discussed before Points I and III.

#### Point II

The only facts in dispute are the speed of the GARDEN STATE and the direction of the current.

The contention that the speed over the ground was 4.2 knots cannot be accepted in the face of the concession by counsel for Appellant that the average speed for the 1.4 miles approaching the place of the collision was 6 knots over the ground (R. 92). As indicated in the above findings of fact, this is definitely established as correct based on the time and distance involved. Due to the lower speeds when starting ahead after drifting and slowing down prior to the collision, it necessarily follows that the speed at times was more than the 6 knot average.

The fact that the current was flowing in a northerly direction is established by the testimony of the pilot that the current had a northerly set (deposition, p. 30), the testimony of the Master that it was necessary to steer to the left of the channel course (R. 49), and the drift of the ship to the north about a quarter-mile during the 22 minutes before the pilot left. The latter indicates that the rate of the current was about 3/4 of a knot.

Since the ability to stop in fog is judged in terms of stopping dead in the water rather than over the ground (Commandant's Appeal Decision No. 1259), it is to Appellant's advantage that the set of the current was to the north. Thus, the average speed of the GARDEN STATE through the water was slightly over 5 knots whereas it would have been 8 knots through the water running against a 2-knot adverse current while averaging 6 knots over the ground.

#### Point I

Any fault on the part of the ALASKA MARU has no bearing on whether or not Appellant is guilty since the basic criterion applied in these proceedings is negligence rather than contributory fault. Commandant's Appeal Decisions Nos. 586, 728, 730, 868, 946, 989, 1166, 1349, 1353, 1366, and 1510.

According to 33 U. S. Code 1076(c)(iv), the ALASKA MARU was required as a vessel over 350 feet in length, to sound a bell in the forepart of the ship and a gong in the after part, each to be sounded for about 5 seconds at intervals of not more than a minute. A whistle signal may also be

used as a warning but its use is not mandatory. Obviously, the ringing of a bell on the bridge was inadequate in terms of the requirement of the statute for vessels anchored in waters governed by the International Regulations.

On the other hand, Appellant was under the obligation to proceed, in fog, "at a moderate speed, having careful regard to the existing circumstances and conditions." 33 U. S. Code 1077. Nevertheless, in dense fog which limited visibility to 150 feet, Appellant was navigating the GARDEN STATE at a speed which, in his opinion, would require a ship length (455 feet) in which to stop after engines were going full astern (R. 82, 88, 89). This was three times the distance of visibility rather than the one-half of such distance which has been defined as the stopping ability required in order to comply with the "moderate speed" requirement of Rule 16.

Also, the radar was inoperative while the ship was under way, outside the fairway, in an area where there was a strong probability of vessels being anchored because of the dense fog. Appellant had been informed of vessels anchored to the south of the fairway and the pilot testified that there was no particular anchorage area approaching the marked channel. Under these circumstances and conditions, it is my opinion that Appellant navigated his vessel at a greater speed than a prudent master would have under the same circumstances. Logically, Appellant should have proceeded on a westerly course in the fairway to avoid vessels anchored to the north and south of the fairway, or he should have moved at bare steerageway to a suitable anchorage area and anchored.

Analogously, there is authority that under similar circumstances, where a vessel is anchored in fog in a proper place and is sounding inadequate fog signals when struck by another vessel which is moving slowly but is unable to stop in the distance of visibility, both vessels are at fault. The WATUPPA, 283 Fed. 8 (2d Cir. 1922); The WALTER FRANKS, 299 Fed. 319 (2d cir. 1924); The SOUTHWAY, 2 F. 2d 1009 (E.D. N.Y. 1924). In the Pearce case cited by Appellant, the moving vessel was proceeding cautiously, having just ordered the engines ahead after they had been stopped for some time; the anchored vessel was in the channel and not sounding any fog signals. In the present case, the immoderate speed of the GARDEN STATE is not excused by the inadequate fog signals of the ALASKA MARU.

### Point III

There is no merit to these contentions as bases for modification of the order.

The specification was changed from failure to navigate "with caution" to "at a moderate speed" in ample time to prevent any possible prejudice to Appellant. The conduct to which the original specification referred was obvious.

Although no prejudice has been shown by the denial of a transcript for the preparation of proposed findings and conclusions, there is no reason to deprive counsel of the use of a transcript for such purpose when a transcript has been prepared and is readily available.

Appellant has not been judged by hindsight but by what he did and what he reasonable should have anticipated under the circumstances.

### CONCLUSION

Although Appellant was not on the bridge at the moment of impact, he was responsible for the speed of the GARDEN STATE while approaching the place of the casualty. The order imposed is justified in view of Appellant's prior record of two navigational offenses.

### ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 9 February 1965, is AFFIRMED.

E. J. Roland  
Admiral, United States Coast Guard  
Commandant

Signed at Washington, D. C., this 25th day of April 1966.

/P/

### INDEX

#### ANCHORED VESSEL

collision with  
excessive speed in fog  
fog signals not sounded  
properly anchored  
signals in fog not sounded

#### COLLISION

anchored vessel

#### MODERATE SPEED IN FOG

anchored vessel, collision with  
stopping in water

#### NEGLIGENCE

anchored vessel struck

as criterion rather than fault

## SIGNALS

anchored vessel in fog